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10/010,009	11/09/2001	Henry J. Halverson	102167-200	5016

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EXAMINER

TUDOR, HAROLD JAY

ART UNIT

PAPER NUMBER

3641

DATE MAILED: 08/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

Applicant(s)

Examiner

Group Art Unit

10/010,009

Halverson

Tudor, H.J.

3641

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 5-29-03
- ☐ This action is FINAL.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-27 is/are pending in the application.
- Of the above claim(s) 1-23 is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 24-27 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 1 7.2(a)).

*Certified copies not received: _____

Attachments

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). 10
- ☐ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

Office Action Summary

Art Unit: 3641

1. The amendment filed May 29, 2003 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: There is no basis in the original disclosure for "In both preferred embodiments, the bullet can have a weight of 120-125 grains", emphasis added. Claims 27 depends from only claim 24, the first embodiment. Applicant is required to cancel the new matter in the reply to this Office Action.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Art Unit: 3641

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 24, 25 and 26 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Beal 5,847,313. Beal discloses a jacketed bullet comprising a copper jacket 47, line 9 of col. 7, a tin first core 51, line 52 of col. 10 and a tungsten second core 13 containing 50% or more by weight of tungsten powder, line 21 of col. 6. With respect to claim 26, Beal states that the second core can contain a micronized polyolefin such as polyethylene homopolymer, lines 53-53 of col. 6. The Beal bullet will inherently perform the function of claim 25.

5. Claims 24 and 25 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by either Vaughn et al or Beal 6,371,029. Vaughn et al disclose a jacketed bullet comprising a copper alloy jacket 15, line 7 of paragraph 28, a monolithic tin first core 10, line 6 of paragraph 28, and a tungsten second core 13 containing 75% of tungsten, line 10 of paragraph 28. Beal

Art Unit: 3641

discloses a jacketed bullet comprising a copper jacket 14, lines 40 of col. 4, a tin first core 32, line 55 of col. 5, and a tungsten second core, line 43 of col. 8. The Vaughn et al bullet and the Beal bullet will inherently perform the function of claim 25.

6. Claim 25 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Beal 5,847,313, Beal 6,371,029 or Vaughn et al in view of PCT WO 97/20185. If Beal 313, Beal 029 and Vaughn et al do not perform the function of claim 25, then the PCT application clearly teaches that it is old and well known in the art to vary the characteristics of a bullet so that it will not defeat level 2 body armor to protect law enforcement agents, note lines 8-20 of page 2 and examples 1, 2 and 3. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the characteristics of either the Beal 313 bullet, the Beal 029 bullet or the Vaughn et al bullet so that the bullets will not defeat level 2 body armor in view of the teaching of the PCT application.

7. Claim 27 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Beal 5,847,313, Beal 6,371,029, or

Art Unit: 3641

Vaughn et al. It would have been obvious to one having ordinary skill in the art at the time the invention was made to vary the weight of the bullet to achieve an optimum result, note In re Aller, 105 USPQ 233 (CCPA 1955) and In re Reese, 129 USPQ 402 (CCPA 1961).

8. Claim 26 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Beal 5,847,313, Beal 6,371,029 or Vaughn et al in view of Mravic et al. Beal 313, Beal 029 and Vaughn et al are applied as above. Beal 313 does not specifically state that the second core is a tungsten-filled polymer core. Beal 029 and Vaughn et al do not disclose a tungsten-filled polymer core. Mravic et al teach that it is old and well known in the art to form a core of a bullet of a tungsten-filled polymer material to form a lead-free bullet to protect the environment. To substitute a tungsten-filled polymer core for the tungsten core in either the Beal 313 bullet, the Beal 029 bullet or the Vaughn et al bullet, as taught by Mravic et al, would have been obvious to one having ordinary skill in the art at the time the invention was made.

9. Applicant's remarks have been carefully considered.

Art Unit: 3641

10. Applicant's remarks that Beal 313, Beal 029 and Vaughn et al do not disclose the claimed elements of claim 24 are not well taken. Applicant's remarks are more specific than the claimed invention. Beal 313, Beal 029 and Vaughn et al clearly disclose the claimed structure of the bullet and the claimed weights, note paragraphs 4 and 5 above. Applicant has not claimed specific structure of the jacket and the cores to define over the Beal 313 bullet, the Beal 029 bullet or the Vaughn et al bullet.

11. With respect to claim 25, the Beal 313 bullet, the Beal 029 bullet and the Vaughn et al bullet will perform the claimed function. It is incumbent upon applicant to show that the Beal 313 bullet, the Beal 029 bullet and the Vaughn et al bullet do not possess the claimed characteristics, In re Lutke and Sloan, 169 USPQ 563 (CCPA 1971).

12. Applicant alleges that the combinations of either Beal 313, Beal 029 or Vaughn et al and Mravic et al are improper because there is no motivation to combine the references. Mravic et al clearly teach that it is old and well known in the art to form the core of a bullet of a tungsten-fill polymeric material to

Art Unit: 3641

form a lead-free bullet to protect the environment, note line 41 of col. 5 through line 3 of col. 6. Therefore, the combination of references are deemed to be proper.

13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harold J. Tudor, whose telephone number is (703) 306-4172.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Carone, can be reached on (703) 306-4198. The fax phone number for this Group is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read "Harold J. Tudor". The signature is stylized with a large, sweeping initial "H" and "J".

HAROLD J. TUDOR
PRIMARY EXAMINER